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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1270

JOHN J. SPRIGGS,

Petitioner,

vs.

THE STATE BOARD OF LAW EXAMINERS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING AND BRIEF IN SUPPORT THEREOF.

JOHN J. SPRIGGS,
Pro Se.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1270

JOHN J. SPRIGGS,
Petitioner and Respondent Below,

vs.

THE STATE BOARD OF LAW EXAMINERS
Respondent and Complainant Below

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

To the Honorable, the Supreme Court of the United States:

Your Petitioner respectfully shows:

Summary Statement of Matters Involved

This action was brought in the District Court of Fremont County, Wyoming, on June 11, 1943, entitled, The State Board of Law Examiners, Complainant, vs. John J. Spriggs, Respondent. The respondent had been since 1908 a resident of said county and a duly licensed and practicing attorney in all the courts of Wyoming since that date.

There was no allegation in the complaint as to the creation, existence or membership of Complainant board, and

no evidence was offered at the trial, and they did not appear at the trial.

The complaint charged that in July 1942, respondent prepared and circulated among citizens of Wyoming a mimeographed circular letter containing false and defamatory statements concerning the Supreme Court of Wyoming, which statements were designed to bring said court into disrepute with the citizens of the State. To support the charge and as the basis for the complaint, the letter complained of was marked Ex. "A" attached to and made a part of the complaint.

The complaint further alleged that the acts of respondent in so preparing and circulating the mimeographed letter constitute unprofessional conduct on the part of respondent and legal cause for his disbarment or suspension as a member of the legal profession, or such other disciplinary action as to the court may seem proper. The complaint prayed that a hearing be had on the charges and accusation, and that if respondent be found guilty of the matters and things therein charged, he be dealt with as the law directs. The Complaint was signed as follows: "State Board of Law Examiners, by C. A. Zaring, President. Attest: L. C. Sampson, Secretary," and was verified by Louis J. O'Marr, Attorney General of Wyoming. (For Complaint and letter R. 1-8.)

Respondent moved for an order requiring complainant to state what particular portions of the letter were false or defamatory (R. 8-9-10). The motion was denied (R. 11).

Respondent then filed a demurrer stating seven grounds, as follows (R. 12): 1. No cause of action is stated; 2. No professional conduct is set forth; 3. The complaint shows on its face it is a privileged political letter; 4. The court is without jurisdiction to control, censure, suppress or penalize political thought and action; 5. The action is an attempt to

abuse the process of the court to censure, control, suppress, and penalize freedom to think, freedom of opinion, and freedom of speech; 6. The complaint is too indefinite and uncertain and fails to inform respondent as to what statements are false and defamatory; 7. There is further a lack of jurisdiction because there are no stated complainants with their alleged capacity to exist and sue set forth, save under the assumption that such a legal board exists with proper membership.

The demurrer was argued (Trans. 5, R. 78-9) but no ruling given other than the result of the final judgment.

Respondent filed an answer and again included the demurrer therein (Ans. VIII, R. 17-8) and defended the letter by answer and throughout the trial in both the lower and supreme court on grounds that may be briefly summarized as follows:

1. The court has no jurisdiction of the subject matter, and the action is an abuse of judicial process, in that, the letter is a sacred constitutionally privileged political communication, in the nature of a political platform, circulated by respondent in his capacity of candidate for supreme court justice of Wyoming in the 1942 political campaign, and the court has no jurisdiction or power to control, censure, suppress, or penalize political thought or action (Ans. par. VIII-IX, R. 17-8-9).

2. The letter was freedom of speech, and as such protected under the First Amendment to the Constitution of the United States and also under Sec. 20 Art. I of the Wyoming Constitution (See Ans. par. VIII, R. 17; See objection par. IV, R. 120).

3. That the letter criticised two past concluded decisions of the Wyoming Supreme Court, the first 7 paragraphs of the letter referring to a decision of that court rendered

Oct. 1936, and reported 50 Wyo. 277. Par. 12 of the letter referred to another past concluded court decision of that court rendered Jan. 1940, reported at 55 Wyo. 169, the only reference being that they sat therein while a petition was on file with the Governor asking an investigation. The state introduced the petition to investigate (Ex. 2, R. 80). That in both proceedings petitioner was litigant, and attorney for his co-litigant (see par. V, VIII, XIII answer, R. 15-17-23). His property rights were involved, as well as his rights as citizen, and attorney.

4. That the letter referred to past concluded court decisions and involved public men and measures. That his opponent was Chief Justice Riner, who was a candidate for re-election running on his record and the record of the court over which he presided. That the matters involved were of public interest and concern in the political campaign and was Freedom of Speech—the exercise of the natural attributes and inherent prerogatives of American citizenship (Par. VII ans., R. 17).

5. That the letter was the act of respondent in his private capacity as an American citizen and as candidate for public office in a political campaign, and involved no matter of professional conduct, or matter violative of his oath as attorney or of violation of his duties as attorney (See ans. par. VIII, R. 17).

6. That the letter expressed the private legal political opinion of respondent on past concluded court judgments and was comment on public men and measure, matters of public interest in the political campaign. That the letter as such opinion was true in fact and truth and was in harmony with and supported by the decisions of the Supreme Court of the United States, the federal courts, and different

state supreme courts (Par. IX ans., R. 18 and Transcript pp. 15-21) but it was immaterial whether the opinion was right or wrong, it was the opinion of respondent, expressed under these circumstances, and as such it was freedom of speech (See answer, R. 28 Par. XV, See objections, (R. 120-5).

7. That respondent by reason of his status as attorney had not surrendered any of his constitutional rights nor forfeited any of his inherent prerogatives or natural attributes of American citizenship. But that in the exercise thereof he stood on an equality with the mechanic, merchant, businessman, laborer and all other citizens whomsoever before the law, and could not be subjected to any different procedure or punishment for any alleged abuse of freedom of speech than applied to all other citizens. And that Sec. 20, Art. I of the Wyoming constitution guaranteed to respondent on an equality with all other citizens a jury trial, with TRUTH as justification, for any alleged abuse of freedom of speech (R. Par. VII, Ans. 17, Par. XXXI, Ans. 54).

8. That the action was a denial of the equal protection of the constitutional right to freedom of speech, under both the United States, and the Wyoming constitutions, and to a jury trial, with TRUTH as justification as guaranteed by Sec. 20, Art. I, Wyoming Constitution. And that respondent was discriminated against in the action and denied the equal protection of the law, a right guaranteed him by the Fourteenth Amendment to the constitution of the United States. And that by denying him such equal protection of the law, and compelling him to submit his rights, freedom, civil and political liberties, and his welfare and destiny to the very judge and court he had criticised in his letter was a proposition—TOO MONSTROUS TO BE CONSIDERED

FOR A MOMENT UNDER OUR PRESENT SYSTEM, and inhibited by the natural dictates of common justice under the American system of jurisprudence, and repugnant to the American concept of justice, with a fair and impartial trial. (See answer R. 20, Par. X, Asn. See objections R. 120-7.)

9. The respondent demanded a jury trial (R. 57-79) and a jury trial was denied (R. 5, Trans. 79). At the trial the respondent offered in evidence newspapers to support the truth of Par. 3 of the letter (R. 110-114, 31-4 Trans.) but the truth was excluded (R. 112, Tran.) and he set up in his answer and offered authorities from the Supreme Court of the United States, the Federal courts, and different State Supreme Courts to support his legal opinion as set forth in Par. 2 of the letter but these were disregarded and the court decreed that it was immaterial whether respondent was right or wrong, and that it was immaterial if the Wyoming Supreme Court was wrong. (See opinion R. 138.)

10. The Wyoming Supreme Court made an order calling in three District Judges, Ilsley, Metz and Thompson to sit as a supreme court, Judge Ilsley being the same judge who sat as a Supreme Court judge and rendered the opinion in 50 Wyo. 277 which the letter criticised. The order was without notice. (R. 115.) Respondent filed objection (R. 115), but they were denied. (128)

11. The lower court in its findings and recommendations found the letter was circulated as a campaign communication as a candidate for supreme court justice in the 1942 election, and that the same was unprofessional conduct and a violation of the respondent's oath as attorney, and recommended his suspension for a period of 2 years. (R. 69, Recommendations Approved 142.

12. Respondent filed objections thereto in the Supreme Court. He contended the letter was the exercise of the natural attributes and inherent prerogatives of his American citizenship, as was freedom of speech guaranteed him by the First Amendment to the constitution of the United States and also by Sec. 20, Art. I of the Wyoming constitution; that he was entitled to a jury trial; that the court was without jurisdiction, and the action was an abuse of judicial process as an attempt to censure, suppress and penalize political thought and action; that compelling him to submit his case, his right and welfare to the three district judges, among which was the same judge who had rendered the opinion criticised; and denying him the equal protection of the law in the conduct of the trial denied him due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States was contrary to proper and orderly judicial procedure and violated the American concept to a fair and impartial trial. (See objections R. 120-7.)

13. The Wyoming Supreme Court adopted the findings and recommendations of the court below, with the exception that the term of suspension was reduced to 6 months. It adjudged all contentions against respondent. Adjudged him guilty of unprofessional conduct, and that he had violated his oath and duties as an attorney by the letter; that it was not freedom of speech and privileged under either the First Amendment to the Constitution of the United States, or Sec. 20, Art. I of the Wyoming constitution; that he was not entitled to a jury trial; that the letter was false and defamatory; that it was immaterial if the Supreme Court had been right or wrong in its opinion so criticised, the respondent was guilty of unprofessional conduct, and entered its judgment (R. 142 Judgment) suspend-

ing him from practice of law for 6 months thereafter. (See also opinion 155 Pac. 2nd 285.)

The court further held that the action was correctly brought under Ch. 9, Sec. 9-116 Wyo. R. S. 1931 as amended by Ch. 112, Wyo. S. L. 1937 excluding a jury; and that the action was within the meaning and spirit of Sec. 9-114 Wyo. R. S. 1931, and that the court had jurisdiction of the case as so brought.

No petition for rehearing was filed. The court entered its judgment suspending respondent from the practice of law in all the courts of Wyoming for 6 months from and after Jan. 23, 1945 (R. 142 Judgment) and the judgment became, was and is final from Jan. 23, 1945.

II

Statement of Jurisdiction of the Court

1. The jurisdiction of this court is based upon the Judicial Code of the U. S., Sec. 237 B as amended by Act of Feb. 13, 1925, now 28 U. S. C. A. Sec. 344.

The opinion is reported in 155 Pac. 2nd 285. R. 130-142. The final judgment of the Wyoming Supreme Court so finding respondent guilty of unprofessional conduct, and such as constituted a violation of his oath as such attorney, and further that the letter was false and defamatory of the court, and further suspending him from the practice of law in all the courts of Wyoming for 6 months from and after Jan. 23, 1945, (R. 128 Judgment opinion 130-142) were and are final in character.

On the 2nd day of April 1945, Petitioner filed in this court his petition for an extension of time within which to file petition for writ of certiorari and supporting brief and on April 2nd, 1945, Associate Justice Wiley Rutledge of this court made an order granting said last mentioned petition

and extended the time for filing this petition for writ of certiorari to and including May 15, 1945 (R. 142).

Questions Presented

The questions presented by this petition for writ of certiorari are:

GROUP 1

1. Was the letter complained of in the action a constitutionally privileged political communication, and as such was it FREEDOM OF SPEECH and privileged as such under the First Amendment to the Constitution of the United States?

2. Was the letter complained of in the action a constitutionally privileged political communication, and as such was it FREEDOM OF SPEECH and privileged as such under Section 20 of Art. I of the Wyoming constitution; and was respondent entitled to a jury trial, and the right to justify by the TRUTH for the alleged abuse of the right of FREEDOM OF SPEECH charged in the complaint, as guaranteed by said Sec. 20, Art. I, of the Wyoming constitution?

3. Was the letter complained of in the action the exercise by respondent of FREEDOM OF SPEECH, such as constitutes the exercise of the natural attributes and inherent prerogatives of American citizenship, within the meaning, scope and protection of the privilege guaranteed by the First Amendment to the Constitution of the United States and also by Sec. 20, Art. I, of the Wyoming Constitution? And further was respondent entitled to a jury trial, with the right to justify by TRUTH, the alleged abuse of such Freedom of Speech guaranteed by said section of the Wyoming Constitution?

The Wyoming Supreme Court answered all three questions in the negative. Respondent in that court contended in the court below, and now in this Court, that the campaign

letter was such FREEDOM OF SPEECH and was so constitutionally privileged, and that the judgment of the Wyoming Supreme Court conflicts with such constitutional provisions and should be vacated by this Court.

Your petitioner herein contends that this Court has construed those constitutional guaranties repeatedly in conformity with the contentions of petitioner and contrary to the judgment of the Wyoming Supreme Court. On June 12, 1944, in *Baumgartner* v. *U. S.*, 64 Sup. Ct. Rep. 1245, this court says:

> "One of the prerogatives of American citizenship is the right to criticise public men and measures—and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation."

And on the same day in *Hartzel* v. *U. S.*, 64 Sup. Ct. Rep. 1238, this Court says:

> "An American citizen has a right to discuss these matters, either by temperate reasoning, or immoderate and vicious invective, without running afoul the Espionage Act."

Petitioner contends these pronouncements of this Court determine all these questions in favor of petitioner and against the judgment of the Wyoming court, rendering the latter judgment wrong and void. For if these constitutional guaranties are good enough to protect the exercise of the natural attributes and inherent prerogatives of American citizenship by those accused of disloyalty to the government in time of war, all the more certain are they to protect an honorable American citizen, though he be an attorney, in performing a faithful, valuable, necessary public service in exposing judicial errors in past concluded court decisions in a political campaign, especially when that

criticism is sustained as informed by the law as declared by the Supreme Court of the United States, the Federal Courts and different State Supreme Courts.

Petitioner contends that this court has repeatedly determined that FREEDOM OF SPEECH is equally protected in criticism of past concluded court decisions. In *Paterson* v. *Colorado,* 205 U. S. 454, this Court says:

> "When a case is finished, courts are subject to the same criticism as other people."

Citing *U. S.* v. *Cruikshank,* 92 U. S. 542, that these rights are the natural attributes of national citizenship and protected by the First Amendment to the Constitution of the United States; and further, that a judgment of a court impairing these rights violates the rights of Citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

And in *Craig v. Hecht,* 263 U. S. 255, Judge Taft says:

> "It is of primary importance that the right to freely comment on and criticise the actions and opinions and judgments of courts and judges *should be preserved inviolate.*
>
> "If the publication criticises the judge or court, after the matter with which the criticism has to do has been fully adjudicated, and the proceedings are ended so that the carrying out of the court's judgment cannot be thereby obstructed, the publication is not contempt and cannot be summarily punished by the court however false, malicious or unjust it may be. The remedy of the judge, as an individual, is by action or prosecution for libel."

And further *Re Pryor,* 18 Kan. 72, 26 Am. Rep. 747, says:

> "After a case is disposed of, a court or judge has no power to compel the public, or any individual thereof, *attorney or otherwise,* to consider his ruling

correct, his conduct proper, or even his integrity free from stain, or to punish for contempt any mere criticism or animadversion thereon no matter how severe or unjust."

The campaign letter herein criticised two past concluded decisions of the Wyoming Supreme Court. The first 7 paragraphs of the letter referred to the court's decision in *Tibbals & Spriggs* v. *Graham*, reported at 50 Wyo. 277, in Oct. 1936; and paragraph 12 of the letter referred to the decision of that court in *Tibbals & Spriggs* v. *Graham*, at 55 Wyo. 169, rendered Jan. 1940. (par. XVII ans.) R. 29.

There was no attack on the private lives of the judges. There was no allegation of any attempt to influence the action of the court on any pending matter, and no such evidence because it would not be true.

GROUP 2

4. Does the judgment of the Wyoming Supreme Court so rendered in the case on Jan. 23, 1945, finding respondent guilty of unprofessional conduct, and adjudging that conduct to be a violation of the oath of respondent as an attorney, and suspending him from the practice of law for a period of 6 months thereafter, constitute a denial of equal justice to respondent, and a denial to his constitutional right of FREEDOM OF SPEECH under the First Amendment to the constitution of the United States, and also under Sec. 20, Art. I of the Wyoming constitution, with a denial of right to a jury trial, and the right to justify by TRUTH under said Wyoming constitution, so as to further constitute a denial to the equal protection of and due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States, and if so, is the Wyoming judgment void?

5. Was the refusal of the Wyoming Court to admit in evidence newspaper reports of the decision of the Wyoming court in 50 Wyo. 277, offered in support of paragraph 3 of the letter (R. p. 31-4 Trans.) to establish TRUTH; and the action of that court in disregarding the universally harmonious decisions of the United States Supreme Court, and of the Federal Courts, and of different State Supreme Courts, set up and offered by respondent in support of the correctness of his legal opinion set forth in paragraph 2 of the campaign letter in conflict with Sec. 20 Art. I Wyo. constitution, and a denial of equal justice, and to due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States, and also said section of the Wyoming constitution, rendering the Wyoming judgment void?

> Sec. 20 Art. I Wyoming Constitution provides: "Free Speech—libel—Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. And in all trials for libel, both civil and criminal the truth when published with good intent and for justifiable ends, shall be a defense, the jury having the right to determine the facts and the law, under direction of the court."
>
> Sec. 3 Art. I, Wyoming Constitution provides; "Equal Political Rights—Since equality in the enjoyment of natural and civil rights is made sure only through political equality, the laws of this state affecting the political rights and priviliges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency or unworthiness duly ascertained by a court of competent jurisdiction."

Petitioner contends the Wyoming Supreme court in its judgment herein answered the above questions in the negative, and further contends such decision violates his rights

guaranteed by Sec. 20 Art. I Wyoming constitution, and also under both the First and Fourteenth Amendments to the constitution of the United States thereby denying him equal justice and due process of law, by reason of which the Wyoming judgment is void.

The Wyoming Supreme Court is the creature of the Wyoming constitution. It is required by oath to uphold that constitution, including Sec. 20 Art. I, but the effect of its decision herein is to disregard that section, and to re-write it along these lines, towit;

> "Every person—(save an attorney)—may freely speak, write and publish on all subjects—(save and except that an attorney opposing the chief justice running for re-election on his record and the record of the court, may not expose the judicial errors of the judge or court on past concluded decisions. But the chief justice may criticise without restriction, the opposing attorney candidate. If the chief justice abuses his freedom of speech he shall be proceeded against by libel, with a jury trial, and TRUTH as defense, and respond in damages. But the attorney candidate, if he abuses freedom of speech, he shall be denied a jury trial and denied TRUTH as justification, and shall be tried by identical judge he criticised. It matters not that both took the same identical attorney's oath, yet for the same acts, the attorney chief justice shall not violate his oath, but the attorney candidate shall violate his oath and be deprived of his livelihood.)—

The action of the Wyoming court in denying petitioner a jury trial, and in excluding the TRUTH, the newspaper reports to support paragraph 3 of the letter (R. p. 111-4 Trans.) and in disregarding the universally harmonious decisions cited to sustain the correctness of paragraph 2 of the letter (Par. XVII Ans. R. 29 and Seq.; Par. XIX Ans. R. 33 and Seq.), was a denial of equal justice and in conflict with the freedom of speech and jury trial rights of

Sec. 20 Art. I Wyoming constitution, and of the First Amendment to the constitution and violated his rights to due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

The petitioner plead TRUTH of the letter (R. par. IV R. 14—R. 27 ans.) and he offered the TRUTH in evidence (R. 111-4) and he urged these contentions in the Supreme Court (R. 130. See objections R. 120-4).

The Supreme Court, in the 3rd paragraph of its opinion (155 Pac. 2nd 286) states that the defense is based on 5 grounds, but omits that petitioner urged the TRUTH as a defense. On page 288, the court quotes paragraphs of the letter basing its decision on this paragraph along with others, thereby considering the statement but denying proof of its truth (R. 134). Again on page 290 (R. 138), in the last paragraph in column 1 of the page the court says: "Even if the court had erred in its decision, as contended by the respondent, that would not have justified the respondent in going to the extremes he did in this article" from which it is apparent the court totally disregarded the TRUTH of the statements.

The decision then cites a case from California and one from Utah, and in each of those cases the court therein took up the statements complained of, applied them to the facts and law of the case, and pointed out wherein there could be no legal justification, in truth, fact, or law. But THIS COURT failed to state the facts of the record which supported the truth of this petitioner's statements, or to refer to the decisions which supported the correctness of his legal opinion in paragraph 2 of the letter. Then in the next to the last paragraph of its decision—page 292 (R. 141)—it says;

> "His charges of ignorance, prejudice, bias, gross incompetency against the Supreme Court is in our minds, wilful, malicious, and UNTRUTHFUL, and made with the intention of bringing the court into disrepute."

Petitioner by motions asked to have set out what portions were false (R. 9) and the court denied the request (R. 11). Then petitioner propounded the interrogatory to complainants requesting the same information (R. 56) and in their answers (R. 58), they could not comply. He set it up in par. IV of his objections in the Supreme Court (R. 121) but that court did not state one fact, or point any court decision against the legal opinion in par. 2 of the letter, altho it quotes that paragraph as ground for its judgment (page 288, R. 134 of opinion), all of which petitioner contends calls for an affirmative answer by this Court to questions 4 and 5 in GROUP 2, requiring a vacation of the Wyoming court judgment, because truth is made a crime instead of a virtue.

GROUP 3

6. Was the decision of the Wyoming Supreme Court herein, construing the constitutional right of this petitioner to FREEDOM OF SPEECH under the First Amendment of the U. S. constitution, and his right to due process of law under the Fourteenth Amendment of that constitution so out of harmony with and in conflict with the decisions of the Supreme Court of the United States construing those same constitutional provisions as to make the decision herein a denial of equal justice and the equal protection of the law and to due process of law rendering the Wyoming decision void?

7. Did the conduct of the Wyoming court herein denying respondent a jury trial, and the right to justify by truth his campaign letter, coupled with the further conduct of that court in compelling petitioner to submit his case, his constitutional rights, his welfare, security and destiny to Judge Ilsley, the same identical judge who sat in 50 Wyo. 277, as a supreme court and rendering the opinion therein which was criticised in the campaign letter, constitute such

a departure from the orderly procedure assured by the dictates of common and natural justice, as well as from Sec. 20 Art. I Wyoming constitution, and did that conduct so offend and contravene and violate the American concept of the constitutional right of petitioner to a fair and impartial trial, that it forth the supervisory power of this court to vacate said judgment as void, and accord petitioner a fair impartial trial as guaranteed by the 14th Amendment to the U. S. constitution, and as required by the dictates of common and natural justice rendering the judgment void, and requiring reversal by this court?

8. Does said judgment violate Petitioner's constitutional rights under Sec 3 and Sec 37 Art I of the Wyoming Constitution, further denying him due process of law as guaranteed by the 14th Amendment to the U S Constitution?

> Sec 37 Art. I Wyo Const provides; "Supreme Law—What is? The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the Supreme Law of the land".

The Supreme Court of Wyoming, in *Hudson Oil Co.* v. *Bd. of Commrs.* 105 Pac 2nd 286 acknowledges the duty of the Wyoming courts to follow the interpretation of the U S constitution as placed thereon by the U S Supreme Court. But in the case herein it failed to accord Petitioner that right. It failed to protect his freedom of speech as that freedom of speech is guaranteed in the natural attributes and inherent prerogatives of American citizenship and by the U S Constitution and the decisions of this court construing those rights.

Sec 3 Art I Wyo constitution guaranteed Petitioner equal political rights and these were denied him. He is denied freedom of speech in a political campaign. He is threatened with punishment if he exercises those rights in the future. In

par. 12 of their opinion—R. 138, page 290—of 155 Pac. 2nd the court quotes the concluding paragraph of the campaign letter, and denounces Petitioner for asking an invitation to place the official files and records of the court before bar association, law schools so that they can analyze the records and form their own honest judgment thereon. And further it denounces Petitioner for exercising the right to petition the legislature with Tibbals. What punishment would it mete out to Tibbals for the same conduct? Is it equality? And there is threat of future punishment if the right of petition be exercised, or if he solicits an invitation from bar associations and law schools to present the official records of the court for their judgment.

For the same conduct, Petitioner is denied a jury trial that other citizens may have. And the conduct of Judge Ilsley sitting on his own case vitiates the Wyoming judgment, and is a denial of due process of law. Cooley on Constitutional Lim. pg. 592 says;

> "No one ought to be a judge of his own case. And so inflexible and manifestly just that Lord Coke has laid it down that—"even an Act of Parliament made against natural equity as to make a man a judge of his own case IS VOID OF ITSELF."

Petitioner in his objection to the Supreme Court order calling in these district judges (R. 115-9) quotes the Wyoming constitutional builders on this matter, and they expressed their conception thereof in such terms as:

> "You make your appeal to a court one-third of whose members are dead against you—WHAT SHOW HAS A DEFEATED PARTY? WHAT SHOW HAS THAT MAN GOT BEFORE THAT COURT WITH ONE JUDGE ALREADY AGAINST HIM? WHAT KIND OF A COURT IS IT THAT IS CONSTITUTED THAT WAY? WHAT RIGHTS HAVE LITIGANTS? THE OTHER JUDGES DO NOT CARE TO REVERSE ONE OF THEIR ASSOCIATES—AND I SAY THEY WILL ENDEAVOR TO FIND OUT SOME WAY IN WHICH

THEY CAN AFFIRM THE DECISIONS OF THE COURT BELOW, AND THEY WILL OFTEN GO OUT OF THEIR WAY, AND NOT MEET THE POINT RAISED IN THE CASE AT ALL BUT WILL FLY OFF ON SOME TANGENT IN ORDER TO AFFIRM THE DECISION OF THE COURT BELOW.

"AND IF HE IS A MAN FIT TO FILL THE POSITION HE WILL NOT REVERSE HIMSELF.

"AND UNLESS THE MACHINERY AND POLICY OF THE STATE IS SUCH THAT IT WILL ADMINISTER JUSTICE TO ALL ALIKE, THEN I SAY TO YOU GENTLEMAN—LET US ADJOURN AND GO HOME.

"And I want to ask you further, is there a man, who if compelled to litigate for his rights, if he goes into court to litigate, and while in that court his rights are jeopardized—a decision is procured that is detrimental to his interests—a decision that is WRONG—a decision an independent supreme court might reverse, I want to ask you if a single man in that position cares to go to a supreme court WHERE HE WILL FIND THE GOVERNMENT JACK KNIVES IN HIM?"

The United States Supreme Court, *Craig* v. *Hecht* 263 U S 255, Taft, ex-president and Ex-Chief Justice of this court, pointed out the danger of such a concept.

The Supreme Court of N. D., *State ex Rel. Linde* v. *Robinson* 35 N. D. 410 declares;

"It is now universally recognized that a person cannot be a judge of his own case. Authority to preside in his own cause cannot be conferred by POSITIVE ENACTMENT. No matter how broad the grant of judicial power, this rule remains operative.

The rule applies in all cases where judicial functions are to be exercised. It is not left to the judge's discretion, or his sense of decency to decide whether he shall act or not."

The Supreme Court of Penn, in Ex Parte Steinman, 95 Penn St 220, 40 Am. Rep. 637 declares;

"The office of attorney is his property. He cannot be deprived of it except by 'due process of law'—To say that an attorney can only speak on this subject under liability to be *called to account*, or be deprived of his profession and livelihood, by the very judge or judges, whom he may consider it his duty to attack or expose is A POSITION TOO MONSTROUS TO BE ENTERTAINED FOR A MOMENT UNDER OUR PRESENT SYSTEM."

The Supreme Court of Minnesota in Re Hart, 104 Minn 88, 17 LRA (NS) makes the same identical declaration,

In the impeachment trial of Judge Peck, in the U S Senate for fining, imprisoning and disbarring attorney Lawless for criticising the Judge's opinion, Ex-president Buchanan, prosecutor says:

"Judgments are pronounced and the reasons for it go out to the world in the form of an opinion. Is not that opinion as fair a subject as any other paper? And will not, and ought not such opinions be freely criticised—as long as liberty shall endure in this country?

"And yet on principles which governed respondent's conduct, the Supreme Court possesses power to bring all editors throughout the Union before them, who—have dared impute errors in their opinions and punish them by fine, imprisonment at their pleasure.

"THE VERY ATTEMPT TO EXERCISE SUCH POWER WOULD CONVULSE THE PEOPLE OF THIS COUNTRY.

"If a judge be corrupt, or partial in his judicial conduct, or should perchance be a fool—a case which sometimes happens—it is not only the right, but the bounden duty of his fellow citizens to expose him, and his errors.

"If a man be notoriously incompetent for the judicial station he occupies, though it be no ground for impeachment—yet it is a state of things on which the force of public opinion may rightly be exercised for the purpose of driving him from the bench.

"If the power to punish libel does exist, a Judge may decide as he pleases without regard to either honesty or law, and then silence the press in relation to his con-

duct by denouncing fine or imprisonment against all those who dare expose his errors. The GREATER THE TRUTH THE GREATER THE LIBEL. A weak Judge hates criticism. A weak Judge when his capacity is called in question would always be the most cruel."

GROUP 4

9. Are either or all of the following statutory provisions of the Wyo. R. S. 1931, to-wit: Sec. 9-113, prescribing the attorney's oath—"that he will faithfully, honestly, and to the best of his abilities perform the duties of attorney and counsellor-at-law" relied upon by the court (See opinion—R. 136—155 Pac. 2nd page 289); and sec. 9-114 under which this action is brought conferring jurisdiction on the court to disbar or suspend an attorney for—"the wilful violation of any of the duties of attorney or counsellor" (R. 133) (Quoted page 287 of the opinion); or sec. 9-116, as amended by Ch. 112, Wyo. S. L. 1937, (Quoted page 287 of the opinion) (R. 132) providing a trial by a three-judge panel, and without a jury; or the rules of the Wyoming Supreme Court, as set forth on page 291 of the opinion, a restriction or limitation, or are they inconsistent with and repugnant to the natural attributes and inherent prerogatives of petitioner's American citizenship, and to his constitutional guaranty of Freedom of Speech under the First Amendment to the Constitution of the United States; and to the same Freedom of Speech, with a jury trial and TRUTH as justification under Sec. 20, Art. I of the Wyoming constitution; and to equal justice and due process of law under the Fourteenth Amendment to the Constitution of the United States, and therefore void as unconstitutional? And further is the judgment of the Wyoming Supreme Court construing the campaign letter as a violation of petitioner's oath, and of his duties as attorney, and his denial of a jury trial, likewise void, either because said

statutory provisions and rules of the court are void and unconstitutional, or because the Wyoming Supreme Court wrongly construed those statutes and rules, and made a wrong and unconstitutional application of those statutes and rules to the petitioner's campaign letter?

Petitioner contends that the Wyoming Supreme Court wrongfully construed and unconstitutionally applied said statutes and rules to the facts herein, rendering the judgment void. The contention is predicated on the rule stated in *N. C. & L. R. Co.* v. *Walters*, 294 U. S. 405, 415, 79 L. Ed. 949, 955:

> "A statute valid as to one set of facts may be invalid as to another."

Accordingly, the said statutes and rules might be valid if the action had to do with conduct of an attorney in his professional conduct, as some default in his duties to his client, or some act obstructing justice in a pending case, etc. However the conduct herein set forth in the complaint is not the act of petitioner acting as an attorney, but in his private capacity as citizen, as candidate for public office, and in the exercise of his natural attributes and inherent prerogatives as American citizen, and in his constitutional guaranty of Freedom of Speech. The unconstitutional misconstruction and application by the court of the campaign letter with reference to those statutes and rules is in conflict with, repugnant to petitioner's constitutional Freedom of Speech and to due process of law, and therefore void.

The Supreme Court of Minn. *Re Hart*, 104 Minn. 88, 17 LRA(NS) 585; and the Supreme Court of Pennsylvania, *Ex Parte Steinman*, 95 Penn. St. 220, 40 Am. Rep. 637; and Wisconsin Sup. Ct. in *State Ex Rel.* v. *Circuit Court*, 97 Wis. 1, 65 ASR 90; and the Supreme Court of Oklahoma in *Owens* v. *Clark*, 6 Pac. 2nd 761, where a like action was libel;

and in *Ex Parte Owens*, 258 Pac. 802; the Supreme Court of Kansas in *Re Pryor*, 18 Kan. 72, 26 Am. Rep. 747; the Supreme Court of Texas in *Jackson* v. *State*, 21 Tex. 668; the Supreme Court of Oregon in *State* v. *Kaiser*, 20 Or. 50, 23 Pac. 964; the Supreme Court of Washington in *State* v. *Tugwell*, 19 Wash. 256, 52 Pac. 1062; the Supreme Court of Rhode Island in *Re Troy*, 111 At. 723; the Supreme Court of the United States in *Paterson* v. *Colorado*, 205 U. S. 454; and in *Craig* v. *Hecht*, 263 U. S. 255.

The Reporter's Note to *Ex Parte Steinman*, 40 Am. Rep. 641 cites also *Ex Parte* 2 Dow P. R. 110; and also *Re Walace* in Supreme Court of Nova Scotia, L. R. 1 P. C. 283 to the point. They all point out the difference between attorney's profession and private conduct.

To cite the many other cases is only cumulative.

Petitioner further contends that if the Wyoming legislature did intend such statutes and rules as a restriction and limitation on Freedom of Speech, such as this campaign letter, then the Wyoming court decision is void because the statutes themselves and rules are void.

The right of petitioner to practice law is his property. Some courts, probably through unsound reasoning, have concluded the attorney's right to practice law standing alone is not protected by the due process of law of the 14th Amendment to the U. S. Constitution. But that is not the situation, nor the question at issue herein.

The question here is—has the Wyoming Supreme Court deprived petitioner of his Freedom of Speech under the guaranty of the First Amendment to the U. S. Constitution, and under Sec. 20, Art. I of the Wyoming constitution, along with his constitutional right thereunder to a jury trial and to justify by TRUTH, rights that are unquestionably protected by both constitutions? And further by a denial of those unquestioned constitutional rights, further vio-

lated the Due Process of Law clause of the 14th Amendment to the U. S. Constitution? And have they accomplished this unconstitutional end by wrongly twisting and misconstruing the attorneys oath, or the duties of an attorney, and by denying this petitioner the right to exercise the natural attributes and inherent prerogatives of American citizenship? And they accomplish this end by wrongly holding that an attorney surrenders essential attributes and prerogatives of American citizenship by reason of his status as attorney, thus making him an inferior or dwarf citizen. In other words, the Wyoming Supreme Court by its judgment herein has decreed that petitioner cannot be a true American citizen, and exercise the natural attributes and inherent prerogatives of such honorable citizenship and at the same time be an attorney.

This court in *West Va. State Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 87 L. Ed. 1171, clearly expresses the distinction saying:

> "The 14th Amendment, as now applied to States, protects the citizen against the State itself, and all its creatures,—Boards of Education not excepted.
>
> It is important to distinguish between the due process of law clause of the 14th Amendment, as an instrument for transmitting the principles of the First Amendment, and those cases in which it is applied for its own sake.
>
> The test of legislation which collides with the 14th Amendment because it also collides with the principles of the First Amendment is much more definite than the test when only the 14th Amendment is involved.
>
> Much of the vagueness of the 14th Amendment of the due process of law clause disappears when the specific prohibitions of the First Amendment become Standard.
>
> The right of the State to regulate for example, a public utility, may well include so far as the due

process test is concerned—power to impose all restrictions which the legislature may have a rational basis for adopting.

But Freedom of Speech and of the press, or assembly, and of worship, may not be infringed on such slender grounds.

Those who begin coercive elimination of dissent, soon find themselves the exterminating dissenters. Compulsory unification of opinion achieves only the anonymity of the graveyard.

It seems trite, but necessary to say that the First Amendment was designed to avoid these ends by avoiding these beginnings. We set up government by consent and the Bill of Rights denies those in power any legal opportunity to coerce its consent.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion,—OR OTHER MATTER OF OPINION—or force citizens to confess by word, or act, their faith therein.

Love of country must spring from willing hearts, and free minds, inspired by a fair administration of wise laws, enacted by the people's representatives, within the bounds of express constitutional prohibition. These laws must be consistent with the First Amendment and permit the widest toleration of conflicting viewpoints consistent with a society of free men."

Petitioner contends the record herein discloses that his legal criticisms were supported by the unanimous decisions of all the courts of the land. That every statement in the letter was as true as legal authorities, as rules of legal reasoning, as facts could make them. And the effect of the decision herein is to penalize his right to think, his right to reason intelligently, and to make him accept the erroneous action of the Wyoming court in 50 Wyo. 277, and give up his property, and then as a candidate for public office wherein those matters were of public concern in the election

of a judge, surrender his opinion and his rights to place his qualifications compared with the qualification of his opposing chief justice candidate before the voters. And for having exercised his civil and political liberty therein, to be dishonored, penalized and deprived of his means of livelihood, with the command to never dare do so again. Such court action is void.

GROUP 5

10. Is the right of petitioner to be secure in and to enjoy the FOUR FREEDOMS, which are now recognized as the natural attribute and inherent prerogative of his American citizenship endangered and violated by the action and judgment itself, rendering the judgment void? And further does the judgment itself as a precedent, to determine and control petitioner's future conduct, and especially the open threat of future punishment for attempted enjoyment of those freedoms expressed in the concluding lines of the opinion itself, towit:

> "respondent should be suspended from practicing in this state, and that is modified to a period of six months, WHICH WE FEEL IS AMPLE PUNISHMENT AND THAT HE WILL NOT AGAIN BE GUILTY OF SUCH CONDUCT",

so endanger and threaten petitioner's security and safety in the future exercise of those freedoms as to render said judgment void as opposed to true Americanism, requiring this Court to vacate said judgment?

Petitioner contends the import of this judgment, and open threat of future punishment for the further and future exercise of his freedom of speech, is that he will be penalized more drastically for the second offense as viewed by the court, and that his Freedom from Fear, fear of molestation and punishment for the exercise of these constitutional rights, and Freedom from Want, being deprived

of his profession and livelihood, are utterly destroyed. Further that his honor, and his reputation, his standing and character as a good citizen are blasted by the condemnation of the judgment, which call for redemption by this Court through the vacation of the judgment.

The hardships endured by being deprived of his livelihood are small indeed to the humiliation and dishonor to standing, name, reputation and character.

The honorable profession to which Petitioner belongs is entitled to be recognized as one entitling the membership to be freed from the condemnation of a restricted citizenship shorn of the natural attributes and inherent prerogatives of other classes even the disloyal. Their profession is also their property and whatever the rule may have been in the past it should be elevated to the protection of the 14th Amendment to the federal constitution, for not always is the question of other constitutional guaranties, such as freedom of speech, involved as in this case.

Reasons Relied On for Allowance of the Writ

1. The matters involved are of national importance. They present a challenge to the virility and even the very existence of true Americanism, and question whether or not the exercise of the natural attributes and inherent prerogatives of American citizenship is a virtue or a crime.

2. The questions presented involve the correct construction of Freedom of Speech under the First Amendment to the Constitution of the United States, and also under Sec. 20, Art. I, of the Wyoming Constitution, and to Due Process of Law under the 14th Amendment of the Federal Constitution, the final determination of which is a matter of jurisdiction for this Court.

3. The Government is enjoined with the duty to protect petitioner, along with every other citizen in the enjoyment

of such constitutional rights, natural attributes and inherent prerogatives of national citizenship, a duty recognized and stated in *U. S.* v. *Cruikshank,* 92 U. S. 542, Syl. 9, which states:

> "Every Republican government is in duty bound to protect all its citizens in the enjoyment of an equality of rights",

referring to these same constitutional rights. And the duty is to curb any impairment, or abridgment of those rights by the State or any governmental agency whatsoever, including such courts as deny those rights.

4. The judgment of the Wyoming court herein denies petitioner the equality of those constitutional rights, and its procedure in denying those rights, and in denying a jury trial, and disregarding TRUTH as justification, and in compelling petitioner to submit his rights, case, and welfare to the very identical judge who sat as a member of the Wyoming Supreme Court in 50 Wyo. 277, and rendered the opinion criticised, so offends and violates the American concept of justice and the right to a fair and impartial trial as to invoke the jurisdiction of this Court to set aside the Wyoming Judgment, and to protect petitioner in the enjoyment of those constitutional rights in harmony with the prior decisions of this Court construing those rights and privileges. (See cases cited *supra,* pp. 10 et seq.)

Prayer

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Wyoming, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court of Wyoming, and the

stipulated record of the parties therein for this Court, in said cause therein numbered and entitled on its docket, No. 2299, *The State Board of Law Examiners, Complainant*, v. *John J. Spriggs, respondent*, to the end that this cause may be reviewed and determined by this court, as provided by the statutes of the United States; and that the judgment herein of said Supreme Court of Wyoming be reversed by this Court, and that Petitioner may have such other and further relief as to this Court may seem just and proper in the premises.

JOHN J. SPRIGGS,
Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1270

JOHN J. SPRIGGS,

Petitioner,

vs.

THE STATE BOARD OF LAW EXAMINERS,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I

Opinion and Judgment of Court Below

The opinion of the Court below is reported in 155 Pac. 2nd 285. The judgment of the court is found in Record (R. 128—The opinion—pp. 130-142).

II

Statement of Jurisdiction of the Court

The statement disclosing the basis upon which Petitioner contends this Court has jurisdiction is specifically set forth as a part of the petition for certiorari (pp. 8-9) which is adopted and made a part of this brief.

III

Statements of Case and Facts

The facts of the case and the pleadings and issues and action of the court below are likewise set forth in the petition for certiorari under heading—Summary Statement of Matters Involved (pp. 1-8) and Questions Presented (pp. 9-27) and are respectfully referred to, adopted, and made a part of this supporting brief.

IV

Assignment of Errors

The errors on which Petitioner relies upon in this Court appear in the opinion, R. 130-142 and judgment R. 128—and action of the court below and are as follows:

1. The Wyoming Supreme Court erred in holding that the publication of Petitioner's campaign letter, Ex. "A" of the complaint was not the exercise of the natural attributes and inherent prerogatives of American citizenship, and as such was Freedom of Speech and privileged and protected under the First Amendment to the Constitution of the United States and also under Sec. 20, Art. I of the Wyoming constitution.

2. The Wyoming Supreme Court erred in holding that the campaign letter, Ex. "A" of the complaint, and its publication by petitioner to be unprofessional conduct on his part, constituting a violation of his oath, and of his duties as attorney, and adjudging that the letter was not freedom of speech and privileged and protected as such under the First Amendment to the Constitution of the United States, and also under Sec. 20 Art. I of the Wyoming constitution.

3. The Wyoming Supreme Court erred in denying petitioner due process of law as was done in the court's procedure and judgment herein, as such due process of law was guaranteed petitioner by the Fourteenth Amendment to the Constitution of the United States. Such due process of law was denied petitioner by the court herein, and appears in one and in all of the following particulars, all of which appear by the record of the case, and in the proceedings of the court in its trial and judgment, any one of which constitutes by itself, a denial of the due process of law under said 14th Amendment to the Constitution of the United States, towit:

Such due process of law was denied petitioner by the court's action in;

a) Its failure to recognize, uphold and protect petitioner's constitutional right to exercise his freedom of speech, and to exercise his natural attributes and inherent prerogatives of American citizenship, so exercised by the publication of the campaign letter, Ex. "A" of the complaint;

b) Its failure to grant petitioner a jury trial; and compelling him to submit to trial by a three-judge panel in the lower court (R. p. 79);

c) Its conduct in compelling petitioner to submit his case, rights and welfare in the Supreme Court to three district judges, including Judge Ilsley, the identical district judge who sat with the supreme court in 50 Wyo. 277, the opinion criticised, and who rendered the opinion therein;

d) Its conduct in excluding the TRUTH offered in justification of the statements of the campaign letter, and disregarding the legal authorities, and the rules of reason offered in support of the TRUTH and correctness of the legal opinion set forth in the campaign letter (R. 111-114);

e) Its conduct in finding respondent guilty of unprofessional conduct, and entering judgment suspending petitioner from the practice of law for 6 months thereafter, and further depriving him of his safety and security to enjoy the FOUR FREEDOMS in the future, now recognized as attributes of national citizenship; and thereby impairing and abridging and destroying his right to exercise the natural attributes and inherent prerogatives of his American citizenship;

f) Its conduct in misconstruing Sections 9-112 Wyo. RS 1931, as amended by Ch. 112 Wyo. S. 1 of 1937; and sections 9-113-114-116 of the Wyo. statutes, and the rules of the Supreme court, and unconstitutionally applying those statutes and rules as conferring jurisdiction on the court to hear this case, and enter the judgment it did herein, and in so misconstruing the campaign letter as matters within the scope and meaning of those statutory provisions and court rules; (For Rule See Opinion—R. 140).

g) The court erred in denying the motion of petitioner to require the complaint to be made more definite and certain by stating what parts of the campaign letter were false, defamatory and unprofessional conduct (R. 8-10-11);

h) The court erred in denying petitioner's motion to dismiss because of non-appearance of complainant members made at the beginning of the trial (R. p. 77);

i) The court erred in denying petitioner's motion to dismiss made at the close of complainant's case (R. p. 80);

j) The court erred in not sustaining the demurrer (R. 12-17-79—p.): See opinion 130-142.

k) The court erred in its order of Sept. 12, 1944, calling in district judges Ilsley, Metz and Thompson to sit as a

supreme court, and not sustaining petitioner's objections thereto (R. 115);

l) The court erred in not sustaining the objections and exceptions of petitioner to the recommendations of the three-judge panel (R. 120-7).

Summary of Argument

In the foregoing petition for certiorari under the heading "Questions Presented" petitioner set forth ten questions, arranged in 5 GROUPS, presenting the federal questions raised by the record and the judgment and decision of the Wyoming Supreme Court herein. Therein and following those questions presented in each GROUP, he set forth portions of the record with his contentions, and cited and quoted authorities applicable to the record and questions presented, all of which petitioner believes sufficient to resolve all those questions in favor of petitioner and to establish the errors of the Wyoming Supreme Court in its judgment and decision herein which require a reversal by this court of that judgment and decision herein. Petitioner now refers to and adopts that portion of the petition for certiorari, and the portions of the record arguments, contentions and authorities cited, and makes them a part of this supporting brief to all intents and purposes as if re-copied herein at length. Further petitioner says that in the Assignment of Errors in this brief, he consolidated those 10 questions into three Assignments of Error, towit; No. 1-2-3.

In assignment No. 1 he contends the campaign letter, Ex. "A" of the complaint was a constitutionally privileged communication, and as such was Freedom of Speech, and that by the judgment herein there was a denial to him of that Freedom of Speech in violation of the First Amendment to the Constitution of the United States rendering the

Wyoming judgment void, requiring reversal thereof by this court.

In assignment No. 2 he makes the same contentions as to the letter and its being Freedom of Speech, and contends there was a denial to petitioner of such Freedom of Speech in violation of Sec. 20 Art. I of the Wyoming constitution, coupled with a further denial to the right to a jury trial, and to justify the letter by TRUTH, for the alleged abuse of such Freedom of Speech, being also a denial to petitioner of due process of law as guaranteed him by the Fourteenth Amendment to the Constitution of the United States, rendering the Wyoming judgment void and requiring reversal thereof by this court.

In assignment No. 3 petitioner contends that in the procedure of the court herein and in the trial, he was denied due process of law, and the right to a fair and impartial trial as guaranteed him by the Fourteenth Amendment to the Constitution of the United States, and also by the American concept of justice to a fair and impartial trial, and as guaranteed him by the dictates of common and natural justice, rendering the Wyoming judgment void, and requiring reversal by this court. Under such assignment he set the particulars of the procedure he contends violated his right to due process of law and to a fair impartial trial.

As to assignments 1 and 2, petitioner contends the authorities cited from this court alone defining the natural attributes and inherent prerogatives of American citizenship, and defining freedom of speech as a part of every citizen's right, especially the recent case of *Baumgartner* v. *U. S.*, 64 Sup. Ct. Rep. 1245; and *Hartzel* v. *U. S.*, 64 Sup. Ct. Rep. 1238, are clear and to the point, and place the campaign letter, Ex. "A" of the petition, herein as unquestioned freedom of speech under the First Amendment of the U. S. constitution and also Sec. 20 Art. I of the Wyoming

constitution. If so, the judgment of the Wyoming Supreme Court is a denial to petitioner of his constitutional freedom of speech under both constitutions, and is void and this court should reverse the same, as the duty of the government to protect every citizen in the full enjoyment of those rights.

The cases of *Paterson* v. *Colorado,* 205 U. S. 454; and *U. S.* v. *Cruikshank,* 92 U. S. 542; and *Craig* v. *Hecht,* 263 U. S. 255; and *West Va. Bd. of Ed.* v. *Barnette,* 319 U. S. 624, clearly establish that the right to criticize courts and judges is freedom of speech, and such freedom of speech is not impaired because it is a court. The cases *Re Hart* 104 Minn. 88; *Ex Parte Steinman,* 95 Penn. St. 220, to which in the reporter's note, 40 Am. Rep. 637, is cited other cases; *State Ex Rel.* v. *Circuit Ct.* (where prohibition lies to prevent prosecution of such a proceeding as is brought against petitioner), 97 Wis. 1; *Ex parte Owens,* 258 Pac. 802; *Owens* v. *Clark,* 6 Pac. 2nd 761, where they did follow a like procedure to Sec. 20, Art. I, Wyo. const.; *Re Pryor,* 18 Kan. 72; *Jackson* v. *State,* 21 Tex. 668; *State* v. *Kaiser,* 20 Ore. 50; *State* v. *Tugwell,* 19 Wash. 256, all establish that an attorney does not surrender any of his constitutional rights by being an attorney; that in criticising courts on past concluded court decisions, he does not violate his oath as attorney, nor violate his duties as attorney; and that such criticism like unto Petitioner's campaign letter is freedom of speech and constitutionally privileged as such. Further they establish that an attorney's right to practice law is his property. And James Buchanan, ex-President, in his trial of Judge Peck (See Congr. Rec. Mch. 2, 1937, p. 2218), points out that an attorney has the same right to his profession as any other citizen, the mechanic, merchant, musician, laborer, no matter what the occupation, and that the attorney can be given no different punishment for the same conduct than applies to other citizens. This means

a jury trial, with TRUTH as justification, for alleged abuse of free speech.

These authorities establish that the denial to petitioner of his constitutional guaranty of freedom of speech violates both said U. S. and Wyoming constitutions. And this of itself is a denial of his constitutional right to due process of law under the 14th Amendment to the U. S. Constitution, and they thereby sustain assignment No. 3.

It necessarily follows that by denying petitioner his freedom of speech, and due process of law, all the other errors of the assignment No. 3 are established. Therefore, it was error to deny a jury trial; and it was error to exclude the TRUTH offered as justification of the campaign letter; it was error not to sustain the demurrer; it was error not to sustain the motion to require complainant to point out what parts of the letter were false; it was error not to sustain Petitioner's motion to dismiss at the close of complainant's case; it was error not to sustain his objections to the recommendations; it was error to enter the judgment finding Petitioner guilty of unprofessional conduct, and of a violation of his oath and duties as attorney, and to suspend him from the practice of law for 6 months; it was error of the court to assume jurisdiction and hear the case and render the judgment it did; it was error to call in a three-judge panel to sit in the district court; it was error to make the order of Sept. 12, 1944 calling in the three district judges to sit as a supreme court; it was error to call in Judge Ilsley to sit on his own case; it was error not to sustain the motion to dismiss because the complainants failed to appear, as it was their duty and their case, and not the Attorney General's case. Petitioner had a right to cross-examine them to inquire as to what parts of the campaign letter were false, and ascertain their reasons for so asserting.

In establishing the error in denying petitioner a jury trial and compelling him to submit his case to a three-judge

panel in the district court, the same directly violates his constitutional rights under Sec. 20, Art. I of the Wyoming constitution.

In establishing the error of the supreme court calling in Judge Ilsley and Metz and Thompson, it violated the American concept of right and justice and the right to a fair impartial trial. Re Hart, *supra*, states it as a proposition TOO MONSTROUS TO BE ENTERTAINED FOR A MOMENT UNDER OUR SYSTEM, that is our concept and requirements of justice and a fair trial.

Ex-Pres. Buchannan in the Peck impeachment trial—*supra*—said the very attempt to do such a thing, WOULD CONVULSE THE PEOPLE IN THIS LAND OF LIBERTY AND FREEDOM, and it could not be endured SO LONG AS LIBERTY SHALL LAST.

And petitioner refers to his quotations from the Wyoming Constitutional Convention set up in his motion and objections to the order calling in three district judges (R. 116-119) as aptly exhibiting the American concept of justice, as applicable hereto.

Criticism of courts is healthy. It is necessary to a high standard of judicial service. Why elect judges by popular vote, if voters cannot be informed of judges and the conduct of courts? What would have happened to American civilization, and to moral, religious, and social progress if people had been penalized for criticising the opinion of the Supreme Court of the United States in the *Dred Scott* case, decreeing that a colored person was not a human being within the meaning and protection of the constitution of the United States, but was a mere chattel, like a horse or beast of burden? Theodore Roosevelt not only criticised courts, but he urged the recall of judicial decisions by popular vote on constitutional questions. Candidates Dewey and Bricker in the last presidential campaign criticised the Supreme Court of the United States with intemperateness unlimited. The authorities cited herein point out that re-

spect for courts is not impaired thru criticism but that they stand or fall on the quality of their justice. Confidence in courts is preserved by weeding out incompetent judges.

The attitude of the Wyoming court herein in not pointing out the parts of the campaign letter charged, and by it found to be false, yet making a finding that the letter is false and untruthful, presents a situation hard to argue. The litigations began March 17, 1928, and were concluded Jan. 1940, and involved 5 cases in the supreme court and 2 others in the district court. The files introduced in the trial herein are too voluminous to mention scarcely a few high spots. If it is immaterial whether the legal opinion expressed in the campaign letter be right or wrong, as we think it is, then the truth need not be argued. But the supreme court took the opposite view. They found it was false. They said it was immaterial whether the court was right or wrong in its decisions criticised.

Petitioner was a candidate for the public office of supreme court justice in the 1942 campaign. The letter, Ex. "A" of the complaint (R. 3) was circulated as his political platform. It set forth his qualifications for that office, and revealed his conception of right, law and justice, and ethics, and necessarily those of the chief justice opposing him. It set forth his legal opinion on the unsoundness of the action of the Wyoming Supreme Court in two past concluded court decisions, towit; *Tibbals & Spriggs* v. *Graham Receiver*, 50 Wyo. 277, rendered Oct. 7, 1936; and *Tibbals & Spriggs* v. *Graham*, Receiver 55 Wyo. 169, rendered Jan., 1940.

There was no attack on the private lives of any judge. There was no attempt to influence pending judicial action, and none was charged. The opposing candidate was Chief Justice Riner, running for re-election on his record and the record of the court, over which he presided. He sat as judge in both the opinions criticised. The campaign letter

referred to the official action of the court and Judge Riner and was therefore comment on public men and measures in a political campaign wherein the matters involved were of great public concern in the election of a judge.

The opinion of the court in 50 Wyo. 277 was rendered by Judge Ilsley, sitting with supreme judges Riner and Blume. The third supreme judge, Kimball, did not sit. Judge Ilsley is the identical judge who sat in the case herein with two other district judges, Metz and Thompson. Judge Kimball, the regular supreme judge did not sit in either case, but was available in both. Petitioner was a co-litigant in both the cases criticised, and was attorney for Tibbals throughout all the litigations involved. It was his property and rights adjudged in both cases (See opinion, par. 9, R. 131).

Back in 1936 at the time the opinion in 50 Wyo. 277 was rendered, Petitioner was then a candidate for supreme court justice. Therein as his platform he urged judicial reform by a reduction in court costs making it possible for a poor man to appeal his case and not be denied review because of prohibitive costs.

In his campaign platform Petitioner quoted leading jurists, including Ex-president and also former chief justice of this court, Taft, who had urged that excessive court costs tended to defeat justice thru inability of the poor litigant to appeal. Petitioner applied the argument to Rule 37 of the Wyo. Supreme Court, adopted Sept. 30, 1930, wherein the court had required an appellant to file printed or type-written copies of abstracts of the record, pleadings and evidence. This extra burden added to the statutory costs of paying for a type written transcript prevented poor litigants from securing an appeal. Petitioner urged that if elected, he would abolish the rule.

The opinion in 50 Wyo 277 was rendered in the heat of the campaign and just before election. In his campaign adds petitioner has referred to the "life of ease of the

judges" and to the "costs of appeals" and the burdensome requirement of abstracts. In the official opinion in 50 Wyo. 277, the court injected statements as to "the life of ease of judges", and "abstracts need not be printed" and "costs of appeals are no more than in other states". The newspapers accepted and published the official opinion as an answer to petitioner's campaign criticisms. In par 3 of the campaign letter herein, petitioner called this to the attention of the voters. The newspapers were offered in evidence at the trial herein in support of the TRUTH of the statement, but the court excluded them (R. 111-114). The supreme court quotes the statement of par. 3 in its opinion (R. 135) (page 288, as a part of its findings of unprofessional conduct). Thus justification by TRUTH is denied, and TRUTH becomes a crime instead of a virtue.

The court further made an improper and unwarranted application of this par. 3 with reference to petitioner's conduct in the prior campaign, saying, page 289 (R. 137):

> "Another matter indicating his attitude towards the Supreme Court in his statement in par 3, showing he had been criticising the court while it had under advisement the case mentioned in par. 2."

This reveals the attitude of the court and its frame of mind, both in the present action, and the prior 50 Wyo 277. It is the mind of the same Judge sitting in both cases, herein interpreting his view of court criticism as unprofessional conduct, and denouncing petitioner for his prior campaign to reform judicial procedure along the lines urged by leading jurists of the time. Necessarily it portrays the state of his mind at the time he delivered the opinion in 50 Wyo 277, which as reasonably seen, is that he was then resenting this campaign to reform court procedure. The Supreme Court of Oklahoma, Ex Parte Owens 258 Pac. 1 c 779, wherein a lower court freed an attorney from the wrath of

the Supreme Court, quoting Hamilton, in turn quoting Edmund Burke, says:

> "PUBLIC OFFICERS HATE OPPONENTS—All history proves that public officers of any government, when they are engaged in a struggle to retain their places, become bitter and revengeful, and hate those who oppose them —even in the most legitimate way—with a rancor which they never exhibit toward crime."

In Petitioner's objections to the order of the Supreme Court calling in District judges to sit herein (R. 116-7-8) he quoted arguments of Wyoming Constitutional builders revealing their conception of how the minds of brother judges work to sustain one another. Applied to this case, they believe that if a litigant were compelled to submit his rights to a Supreme Court, one third of whom was dead against the litigant, Wyoming was not fit to become a state and they should adjourn and go home. Today they would say Wyoming has *forfeited its right to retain its place in the Union.* Three district judges, two of them, Ilsley and Metz, were re-elected at the last November election without opposition. With the judgment of the Wyoming supreme court herein sustained, penalizing freedom of speech and criticism of courts in a political campaign, no attorney can ever assume the hazzard of becoming a candidate, or urging judicial reforms or betterment. And with the conception of a State's duty to curb such court action against criticism of their decision, these constitutional builders gave the citizens Sec 20 Art I thereof, guaranteeing freedom of speech with a jury trial and TRUTH as a defense for any alleged abuse.

The was no issue in 50 Wyo. 277 involving the "life of ease of judges," or "abstracts need not be printed", or "costs of appeal are no more than in other states." Those were campaign issues outside the case. The injection of these matters into the official opinion, coupled with the ac-

ceptance and publication by the press (R., p. 111-114) as an answer to the campaign adds, impressed Petitioner and his co-litigant as improper, and revealing an unjudicial state of mind in the court, and raised a suspicion that they might not receive an impartial rehearing. They called this to the attention of the court in a courteous manner (R., 106-7-8) as stated in par. 4 of the campaign letter. The Supreme Court considered this contempt. Petitioner set up his different conception in the campaign.

At the same identical time there was pending in the Supreme Court of the United States three cases, No. 353-354-355 (Set up in the answer (R. par. XIV Ans. p. 27)). In that high court the litigants and attorneys filed a Second Petition for Rehearing, and they set up the bias and prejudice in the court. A copy thereof was offered in evidence herein, Ex. 10 but rejected.

The U. S. Supreme Court did not condemn the litigants and attorneys as contemptuous or guilty of unprofessional conduct, but the proper assertion of legal rights. This action of that court was the concept of this Petitioner, and it was in strict harmony with high concept of the bounden duty of an attorney to present the rights of his client, as set forth by Ex-president Buchannan in the U. S. Senate, in the prosecution by impeachment of Federal Judge Peck who had fined, imprisoned and disbarred Atty. Lawless for criticising the judges opinion. (See copy of same, Cong. Rec. Mch. 2, 1937, page 2218)

Par. 1 of the campaign letter is borrowed from the creed of Abe Lincoln—"It is not necessary that I win but I must live up to what light I have" and joined with the inscription expressing the concept of justice often arching the door way to courts—"Oh, Justice, when driven from other habitations, come, make this Thy dwelling place", and then follows Petitioner's concept of his duties as a citizen and

attorney, to expose—"judicial bias, prejudice, failure and incompetency." There is no charge of corruption therein. That word was added by the court. If petitioner had wanted to use that word he would have put it in. This par. of the letter is set forth in the opinion herein as false, defamatory and unprofessional conduct. (Opinion 288, R. 136.)

Par. 2 of the letter sets forth Petitioner's legal opinion of the unsoundness of the Supreme Court's opinion in 50 Wyo. 277. He is of the same opinion still—but now stilled thru denial of his, further right to think and express that opinion. The Three Wyoming Supreme Court decisions set up as nullified are; 40 Wyo. 524, Oct. 1929, which was the final judgment of that court establishing the Tibbals trust in property in his suit filed March 17, 1928, and ordering the property sold. Next 42 Wyo. 214, wherein the Supreme Court dissolved a restraining order of the lower court enjoining Tibbals from executing the mandate; and case 1676 in the Supreme Court, which was an appeal by Federal Gold Mining Co., designated in 40 Wyo. 524 as a Spry owned "paper corporation" from the judgment on the mandate in 40 Wyo. 524 and order denying intervention.

The Fourth final judgment of the district court was case 4623 therein, filed April 7, 1931, *Federal Gold Mining Co.* v. *Tibbals,* wherein this same "paper corporation" again restrained Tibbals from executing the judment on the mandate of 40 Wyo. 524 and seq. (R. 95-8). After a long litigation, wherein every issue was decided for Tibbals, the court carried out the mandate of 40 Wyo. 524, sold the property to satisfy the Tibbals trust, and deeded the property to Tibbals and confirmed sale. Every issue was made, and adjudged in this case in favor of Tibbals, that was subsequently decided to the contrary in the collateral case, 50 Wyo. 277. The matter of custody of the

property (R. 96), and the matter of the option validity, were adjudged in conformity to the universally established law of the land. The Lis Pendens and lien statutes of Wyoming were upheld, in this Direct Ancillary action that were nullified in the collateral action, 50 Wyo. 277. The records of these prior litigations were set up in this present trial herein (Par. XVII and seq. R. 29). Express Statutes Nullified by 50 Wyo. 277—First Sec. 89-825—the Lis Pendens, which inhibits a subsequent lessee from acquiring any adverse right to properties after service in suit. Dates—Mch. 17, 1928, Tibbals filed and served suit to appropriate these properties (R. 29). On Oct. 10, 1928, while the Tibbals suit was in the Supreme Court, the Spry executors, defendants therein, joining with the Federal Gold Mining Co., designated in 40 Wyo. 524 as a Spry owned "paper corporation"—it was all one entity, and so judicially adjudged in case 4623—gave a 4 yr. lease, from Oct. 10, 1928 to Oct. 10, 1932, on these same properties (R. 30). Therein was an option to purchase for $18,000 plus some shares of stock, during the term.

Nov. 3, 1930, a creditor sued the lessee, Midwest Mines Co., to collect $901.25 wages. On allegation of insolvency, Graham is appointed receiver of the lessee. (See opinion 50 Wyo. 277.) (R. 34.) By express statute neither the lessee, nor its creditor could have any adverse right against Tibbals (Sec. 89-25). Further the Wyoming lien laws confine the rights of a creditor of a lessee to the leasehold and property of lessee. The Wyoming Supreme Court in *Geo. Bollin* v. *North Platte Valley Ir. Co.* 19 Wyo. 524; and in *National Supply Co.* v. *Stanton Weaver,* 35 Wyo. 224, had declared this to be the law of Wyoming.

And in case 4623, the district court directly adjudged the receiver had no claims against these properties, and

excluded him from any share in the surplus at the sale (R. 99-100). The decision in 50 Wyo. 277 was contrary to these statutes, and the final judgment in case 4623. So stated the campaign letter.

Case 4623, a direct ancillary action, enjoins Tibbals, defendant therein, from executing his mandate from the supreme court. He wanted to know where he was after THREE trips to the supreme court. He filed a plea specifically alleging that these properties were in custody of law in his prior suit (R. 96). On final judgment the court sustained the plea. But in 50 Wyo. 277, the supreme court in that collateral action, nullified the judgment on this point. The court in 4623 had adjudged in conformity with the universally established law of prior custody in such direct action. In the collateral action the supreme court was contrary to the universally established law of prior custody.

Further in case 3623 Tibbals demanded to be relieved from repeated, never-ending litigations by these same parties. He plead his mournful plea asking relief (R. 97). On final judgment the court sustained this plea. It again decided every issue in favor of Tibbals, carried out the supreme court mandate by sale and deed, and adjudged that the Plaintiff,—FGMC, the Spry paper corporation had at all times been an actual party to the prior litigations 40 Wyo. 524, and was precluded thereby. The court made the judgment in that prior case a part of its judgment therein. Then it gave Tibbals a permanent injunction forever enjoining the other parties from interfering with his rights to execution, or from enjoying the fruits of his judgment, or from interfering with the rights of the purchaser at the sale. And he excluded the receiver from any rights even to the surplus at the sale (R. 99-100, Trans.).

THE OPTION—R. 86-7 and Seq. Also p. 38

The court fixed the sale for Oct. 15, 1932, by strict foreclosure with no right of redemption. The owners and the receiver had tried to sell the properties but failed. While the sale was being advertised they contacted Quinn, who would purchase IF the mine stood the test. He could not make the test before date of sale. The owners and receiver asked Tibbals to do them a favor—to extend the time of purchase to Jan. 1, 1933. Tibbals consented to do so if the option be reduced to writing, acknowledged, then submitted to and approved by the court. All this was done. The court made his order in the case approving the option and directing that sale be conducted accordingly. Then the other parties, including this same Graham, filed a written ratification, both of the option, and of the order approving the option, and asked that sale be made and confirmed without further notice.

Briefly stated, there were three separate options. The Tibbals option was signed by the owners, Spry estate and Federal Gold Mining Co., by their attorney; the receiver by his attorney; optionee, by his attorney; and Tibbals for himself. It was duly notarized by such parties. Tibbals demanded the parties ratify the acts of their attorneys, hence the written ratification. This option provided, that for the mutual benefit of ALL parties owning or claiming any interest,—then stating the terms.

The option provided that it was understood Tibbals would only bid the amount of his judgment at the sale; and that any third party could bid $1. or any sum over his bid and take the property. And that for the protection of the parties, Tibbals would bid such sum as the other parties directed in order to prevent this, but he was relieved from any obligation to account for any surplus. If the

mine stood the test, he would receive the full amount of his judgment, plus $5000. agreed upon as stipulated damages for all the malicious injunction actions.

By a second option, if the mine stood the test the owners would receive some $39,000; and by a third option, the receiver would receive $34,500, which included $5000. receiver fee; and $5000. attorney fee; and some $4000. receiver charges (R., p. 16, Trans.).

The mine failed to stand the test. Tibbals twice extended the option for further tests. On Mch. 1, 1933, the optionee threw up the option. Graham went and took possession. Tibbals & Spriggs brought ejectment, 50 Wyo. 277.

In the meantime, over in the receivership case, the court in case 4561 on application of the receiver to close the receivership, sold, Sept. 1, 1932, the lease with its unexpired term of 6 weeks, and all other personal property of the lessee, for $34,500 in full satisfaction of all creditor claims, alleged liens and general creditors, and the receiver and attorney fee, and costs and gave conveyance (R. 48). The property was purchased by the creditors, taking title in one of their number, Graham, as trustee, who chanced to be the receiver also. Then Graham, signing as Trustee, optioned the property to Quinn as aforesaid (R. 92).

When case 4623 was filed enjoining Tibbals from executing his Supreme Court mandate he filed a plea to jurisdiction, challenging the jurisdiction of the lower court to again enjoin execution of the Supreme Court mandate of 40 Wyo. 524. On two orders of court, one in the receivership case, 4561, and one in case 4623, the receiver was directed to appear in case 4623 and resist the Tibbals plea of lack of jurisdiction in the court. He did so and the court held with the receiver, thereby holding Tibbals in the case as defendant and making him re-litigate all over again these same

rights. Then the receiver set up his alleged claims (R. 95). In the final judgment every issue was adjudged in favor of Tibbals.

In the subsequent collateral ejectment case, 50 Wyo. 277, the receiver flip-flopped and set up that the sale in case 4623 was void because the court lacked jurisdiction, just the reverse of his prior contention inducing the court to hold it had jurisdiction. The Wyoming Supreme Court, *Posten* v. *Delfelder*, 39 Wyo. 163, declares as law, that to permit a party to come into court and induce a court to take action one way, and then afterwards flip-flop and contend the reverse, is conduct so INTOLERABLE, that the court will not even lend him an ear, it being immaterial whether the court did or did not have jurisdiction.

Par. 2 of Petitioner's campaign letter states his opinion that the Supreme Court in 50 Wyo. 277 had rendered an opinion contrary to the universally established law, and nullifying its THREE prior decisions for Tibbals, and the FOURTH district court decision decreeing sale, and in opposition to Wyoming statutes, its constitution, and general law. The statement is true, and the authorities and rules of reason say it is true.

The court in 50 Wyo. 277 decreed the property was in custody of law in receivership in case 4561. This is to say that the Res in receivership proceedings of a lessee, is not the lessee's right in a lease, and his other property, but it is the fee simple title of the owner. That is taking property without due process of law. The Res in receivership is the fund in court, which then belongs to the lessee and can be used to pay the debts of the lessee. This is to say that when Graham at the receiver's sale purchased the property of the lessee, the 6 weeks unexpired term of the lease, he can hold possession years after the lease had expired, and then claim

and sell the fee simple title of the owner, to pay again the debts of the lessee.

The court declared the judicial sale in case 4623 was void. It stated Two propositions of law as reasons therefor. First, there was FRAUD in the sale by Tibbals. Second—The court had no jurisdiction, because the property (—it is speaking now of the fee simple title of the owners, not the lease or property of the lessee, all of which had been sold)—was in custody of law in the receivership case 4561.

The two propositions of law, as abstract propositions, standing alone would be sound if facts supported either. In fact the court states the law of prior custody, but by misapplying the facts, it denied Tibbals & Spriggs the benefit of the very rule of law on which they based the decision.

In one breath, the court said that if Tibbals had asserted his rights first, then he should prevail, but that he did not assert his rights until long after the receiver's rights accrued. The files of both cases were before the court. Tibbals filed and served his suit March 17, 1928. He got the Supreme Court judgment establishing his right Oct. 1929 (40 Wyo. 524). He was ever thereafter restrained. Which is first in time, Nov. 3, 1930, the date of the receivership case, or March 71, 1928, the date of the Tibbals suit?

The judicial sale was in a direct action, ancillary by injunction, and every one of these questions were adjudged in favor of Tibbals. Under all the court decisions, that prior proceedings is first in jurisdiction, and any action by a subsequent concurrent court is futile and void.

FACTS AND LAW OF FRAUD—In law fraud is deceit, taking an unfair advantage, thru some trick. Tibbals agreed at the request of the other parties to assist them, for their own protection to prevent some third party from getting the property for a $1 or so over his judgment. He agreed to

accommodate them, with the approval and assistance of the court, by giving them a chance to realize these substantial sums instead of the nothing they would otherwise get (R. 89 and seq.). A court is duty bound to assist owners at a judicial sale in their efforts to realize their best prospects, as they see them. Tibbals signed an acceptance and agreed to faithfully perform his part, and carry out instructions (R. p. 94 trans.)

Tibbals was to act as the agent for the other parties. He could not commit an actual fraud on them by consenting to do them the favor they asked, that is, help them in chance to realize substantial sums instead of the nothing all knew they would otherwise get. And Tibbals was to act as their agent, and bid as they directed. An agent cannot commit a fraud by carrying out instructions of the principal.

FRAUD IN LAW: The Supreme Court of the United States in the leading case of *Throckmorton* v. *U. S.*, 98 U. S. 61, followed by Federal and State courts, and without a dissent, states the law of fraud in judgments and sales, declaring that in order to constitute, even evidence of fraud to which a court will listen, to vitiate a judicial sale or judgment, the fraud must be EXTRINSIC fraud, and definies that as something not before the court, or that could not have been with reasonable diligence presented to the court. And further defining it as some act of the prevailing party that prevented the other party from having a hearing, or from presenting his case. Here at the request of the other parties, the option was presented to the court, and the court by written order approved the option. And then the other parties, including this same Graham, came back and by written ratification, ratified both the option and the order of the court approving the option (R. p. 93 trans.).

Par. 5 of the campaign letter stated that Tibbals & Spriggs had been branded as frauds without the semblance of jus-

tification in fact or law. Such a branding by a court is immeasurable. The public believes what the court says. Tibbals went to his grave under this unjust condemnation. He is deprived of his property by such unjust decree. Petitioner, then a candidate, was equally smeared before the people of the State, was also deprived of his property, and both defamed for accommodating other parties, and for placing their trust in the court, wherein Tibbals was defendant, and relying on the courts official action.

Freedom of speech compels Petitioner to place the record before the people that friends, neighbors, and strangers may know the facts and form their own conclusions.

> "Men who are honest, when charged with fraud, are not content with merely casting over the challenged transaction an atmosphere of doubt. They are determined to clear their names".
>
> *Bays* v. *Brown*, 86 Pac. 2nd 954.

Second Proposition of Law—The sale was void because the property was in custody of law in the receivership of the lessee case 4561. The universally established law of the entire nation, as declared by the Supreme Court of the United States,—*Kline* v. *Burk Construction Co.*, 260 U. S. 226; *Riverside Cotton Mills* v. *Ala. & Ga. M. Co.*, 198 U. S. 189; and others without end; by the Federal courts—*Lang* v. *Chotaw*, 160 Fed. 355; *Brun* v. *Mann*, 151 Fed. 145, and others without end; by *Ketchem* v. *District Court*, 198 Pac. 483; *Standolind Crude Oil* v. *Busey*, 90 Pac. 2nd 877; *State Ex Rel Sullivan* v. *Reynolds, Judge*, 209 Mo. 161, and other State courts on without end,—there is not a single dissent—all State the law of prior custody as follows:

> "That from the time of filling the bill or service, in a suit to appropriate specific property to plaintiff's claim, the property is thereby, as a matter of law, in the prior exclusive, continuing custody, jurisdiction and control

of the court therein in that case, which custody and jurisdiction continues to final judgment, and sale, then on to protect the title of the purchaser. And during this time no subsequent concurrent court has jurisdiction or power to obstruct, delay, defeat, or otherwise interfere with that prior custody and jurisdiction, and any attempt to do so is futile and void."

The reasons assigned by the courts for the rule is that it is necessary; to orderly procedure; to prevent conflicts; to carry out the purposes for which courts are created; to give force to judgments; to protect titles of purchasers; to protect litigants from endless litigation; to preserve public confidence in courts; for the safety and welfare of society, etc. (R. 31).

Applied to the facts, Tibbals filed suit to appropriate these specific properties to his claim and secured service March 17, 1928. The court in those proceedings had prior exclusive custody, jurisdiction and control of the properties on thru all the litigations to final judgment, sale and deed Oct. 15, 1932; and thereafter to protect the title of purchaser Tibbals. Sec. 89-825 Lis Pendens prohibited the lessee or the receiver from any adverse rights. And when the Supreme Court of Wyoming in 50 Wyo. 277 overturned the judicial sale made in case 4623, which carried out the mandate of the Supreme Court in 40 Wyo. 524 it disregarded all this universal law. And when it told the receiver of a subsequent lessee to hold that property in the lessee's receivership, it violated all this law and rules of reason.

Further the owners and parties who sued Tibbals in case 4623, ratified the judgment and sale, and filed a waiver of right of appeal and made the judgment final and absolute (R. 93). They secured release from the malicious prosecution (R. 87). And they were not parties in 50 Wyo. 277, yet the court set aside the sale they asked without a chance to be heard.

Petitioner had been thru all the long litigations. He saw the mills of justice stop and refuse to grind further. He exercised his right to think. He saw the failure of justice, and when the judge responsible came up for re-election he expressed his opinion. The Supreme Court said his opinion was false, untruthful. It made the requirement that opinion in freedom of speech must be right. But by what standard? The opinion was right according the decisions of all the courts of the land, not a dissent. But it was wrong in the opinion of the court who had rendered the wrong opinion criticised. It is recognized in law that where opinion is arrayed against opinion, and there are physical facts entering which conflict with opinion, the opinion must give way to physical facts.

Here are the facts: March 17, 1928, Tibbals had an original investment of $17,500 evidenced by an undisputed first trust lien on specific properties. That day he filed suit in the proper court, in the proper way to foreclose that trust lien. On Oct. 1929, the Wyoming Supreme Court, 40 Wyo. 524, established the trust, decreed sale to satisfy the trust. The decree of the highest court in the State must be final. One trip to that court is enough. Tibbals had to go back twice more and get two more decrees from that court. Then he is again enjoined from executing the highest court decree, and compelled to relitigate the FOURTH time, the same matters, with the same parties and privies. (Case 4623.) Finally, he gets judgment, the mandate of the Supreme Court is executed by sale, Oct. 15, 1932. He is purchaser, and gets deed, backed by all the solemnity of a final court decree and a permanent injunction enjoining the other parties from forever thereafter interfering with his right thereunder, or the title acquired at the sale. The other parties all ratify the court's action. His original investment of $17,500 is merged in the judgment and deed.

But 4 years later that same Supreme Court nullifies all this. It directs the receiver of a subsequent lessee to withhold, year after year, possession from the owners. While in the custody of the court, to use its terms, the court permits a tax deed to issue (R. p. 102) and wipe out the estate, even from the court. The original investment is lost. The property acquired by the deed is lost. Sec. 8, Art. I of Wyo. constitution guaranteed Tibbals and Petitioner they should both have justice, "without sale, denial or DELAY". Justice delayed is justice denied. Tibbals struggled on to his death Nov. 1939 all the while asking the court to give him possession of his property. He not only lost his property but he lost his reputation as an honorable citizen, being branded a FRAUD by the court for accommodating the other parties, at their own request, by trying to help them realize substantial sums of money instead of nothing, and further by placing his trust and confidence in the court that by written approval directed him to grant the favor. In Jan. 1940—(2 months after his death) the Wyoming Supreme Court, 55 Wyo. 169, closes the court doors to efforts to get possession of his property, and says: You can't sue again. We were right in all that we did in 50 Wyo. 277. Now keep quiet, don't sue any more and let the court sell this property in the receivership of the subsequent lessee. That was over 5 years ago. No court in Wyoming to which appeal can be made. The property, either viewed as an original investment, or as property merged in the judgment, is wiped out by court deed. The first duty of every court is to protect property in its custody from loss. What is the answer to Wyoming's constitutional guaranty—"Justice without denial or delay"?

The Last Word

January 23, 1945, the Wyoming Supreme Court closes its books with the Last Word saying: "Petitioner, for telling

this to the voters, and exposing the record take this further condemnation—"Unfit to Practice Law—Suspension and Loss of Livelihood." Petitioner has lost his property, he has lost his reputation, branded first as a fraud, and then as Untruthful in opinion. Now he loses his livelihood. And like the man held in jail without a charge, listening to the assuring voice of his attorney: "That's unconstitutional, it can't be done here" your petitioner knows too well, physical facts speak saying, constitution or no constitution, It is Done Here."

The campaign letter said "Justice like truth, when crushed to earth will continue to cry out until it rises again." Today it cries out from the grave of Tibbals asking: "Where is my original investment of $17,500? Where is my property deeded to me Oct. 15, 1932, under mandate of the Supreme Court of Wyoming? Of what force was the mandate I got from the Wyoming Supreme Court Oct. 1929? Where is the honor of my good name, and my good reputation destroyed by the unjust brand of Fraud placed thereon by the Wyoming Supreme Court? Was it criminal on my part to grant my adversary litigants the favor they asked of me by trying to help them realize a substantial sum of money thru the court sale of their property? Am I a criminal for placing my trust and confidence in the court that brought me in by its process and held me there and made me litigate for the fourth time the same rights, and by following the directions of that court? Why did the Wyoming Supreme Court deny me the equal protection of the universally established law of fraud? Why did the Wyoming Supreme Court deny me the equal application of the universally established law of prior custody of property? Why did the Wyoming Supreme Court deny me the equal protection of the Lis Pendens statutes of the State, and of the lien statutes, and the general law of the State? Why did the Supreme Court hold the receiver of a subsequent lessee in pos-

session of my property, now almost 13 years after the lease expired, and 13 years after the receiver sold that lease, and now why was he directed to hold a second receiver's sale and this time sell my fee simple title to pay the debts of the subsequent lessee, which debts were once paid thru sale of the unexpired term of the lease? Is all this constitutional justice in Wyoming? Why must my wife and children go on year after year deprived of my estate?

Is this Sec. 8, Art. I, Wyo. Constitution—"Justice without sale, denial, or DELAY"—in action? If all this does not amount up to judicial bias, prejudice, failure and incompetency, then what is it?

The campaign letter continues: "We are now fighting a war for democracy. Democracy is constitutional government with equal justice and right for all. Fathers give their sons; the sons give their lives; each and every patriotic citizen gives of his very best to preserve this sacred heritage. But what availeth all this in Wyoming if the Supreme Court is permitted to deny equal justice to a part of its citizens?"

Will every banker who loans his money and goes into court to foreclose his undisputed first trust lien be compelled to litigate year after year, feeding the court costs, making three trips to the Supreme Court, getting a decree of foreclose, then endure a fourth suit litigating all over again, and finally getting foreclosure by sale and deed then find the court taking his trust property out of the hands of his foreclosing court, and placing it in the custody of a subsequent receiver, and by like conduct, find he has lost his original investment, and likewise the property he purchased at the foreclosure sale, and never regain anything? And lose his reputation too?

Will the property owner who, leases his property for a 4 year term, find a receiver of his tenant holding possession

of his property 13 years after the lease expires, pay no rent, and then find the court has ordered that receiver to sell the fee simple title of the lessor to pay the debts of the tenant?

Will the State of Wyoming itself which leases its vast public lands to drilling and mining companies find the receiver of the lessee holding possession of the State's lands 13 years after the lease expires, pay no rent, and then sell the lands of the State to pay the debts of the lessee?

The campaign letter presented conduct of the Wyoming Supreme Court that affected the welfare of every citizen, every property holder, every future litigant, and the State itself. It was a matter of most vital interest in the election of a judge. And petitioner performed a faithful valuable public service to the people in exposing the conduct of the court in these past concluded decisions. There can be but one law, and that is for every citizen and even the State itself alike. The campaign letter was the exercise of the natural attribute and inherent prerogative of American citizenship, and was freedom of speech under both the First Amendment of the Constitution of the United States and Sec. 20, Art. I of the Wyoming Constitution. The judgment of the court herein is an impairment and abridgement of petitioner's constitutional rights thereto. It is a denial of due process of law under the 14th Amendment to the U. S. Constitution; and the conduct of the court in the trial as hereinbefore set forth, and in those particulars constitutes a denial of freedom of speech and to due process of law as aforesaid, and offends and violates the American concept of justice and of petitioner's right to a fair and impartial trial and the judgment of the Wyoming Court herein is void, requiring reversal by this Court.

It is too true, we are now fighting a war to preserve these sacred heritages of the Four Freedoms. The judgment violates petitioner's right to Freedom of Speech, Free-

dom from Fear, fear of being molested in the enjoyment of his citizenship, as the judgment threatens in the future; Freedom from Want, for how long does it take a man to suffer thru being deprived of his livelihood?

Almost a million casualties on the battle front, sacrificing to preserve these Freedoms and the American way of life. What is Americanism without freedom of speech and equal justice? The Government owes the duty to protect petitioner along with every citizen in the enjoyment of his American citizenship. There should not be one single casuality on the home front. The United States Supreme Court must answer with The Last Word.

Conclusion

It is respectfully submitted that this case is one calling for the supervisory powers of this Court by granting the writ of certiorari and thereafter reviewing and reversing the judgment and decision of the Supreme Court of Wyoming.

All of which is respectfully submitted.

JOHN J. SPRIGGS,
Petitioner.

APPENDIX

Amendments—U. S. Constitution, Art. I—"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Art. XIV—"—* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Wyoming Constitution; Sec. 20 Art. I—"Free Speech-Libel —Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and for justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and law under direction of the court."

Wyoming Constitution, Sec. 8 Art. I "All courts shall be open, and every person for an injury done to person, reputation or property shall have justice administered without sale denial or delay."

Wyoming Constitution, Sec. 3 Art. I "Equal political rights —Since equality in the enjoyment of natural and civil rights is made secure only through political equality the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness, duly ascertained by a court of competent jurisdiction."

Wyoming Constitution, Sec. 37 Art. I "Supreme Law— What is—The state of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land."

Wyoming Constitution, Sec. 6 Art. I
Wyoming R. S. 1931

Sec. 9-113 "Oath of Attorney—No person shall be deemed admitted to the bar until he shall have taken an oath to the effect that he will support, obey, and defend the constitution of the United States, and the constitution and laws of this state; and that he will faithfully and honestly and to the best of his ability discharge the duties of an attorney and counsellor at law."

Sec. 9-114—"Causes for revocation or Suspension of License—5 For the wilful violation of any of the duties of attorney and counselor."

Sec. 916, as amended Ch. 112 S. L. 1937—"The State Board of Law Examiners shall enforce the law relating to attorneys-at-law, and shall have general charge of suspension and disbarment proceedings, or proceedings brought to suspend or revoke the license of any attorney or counselor at law to practice in this state. Such proceedings shall be brought and the hearing had in the district court in the Wyoming county where the accused resides, or last resided; and the prosecuting attorney of the county wherein the hearing is held shall assist the Board in the conduct thereof, and the Attorney General shall assist when so requested by the Board. Subpoenas shall be served in the same manner as in criminal cases, and the accused attorney may have issued such subpoenas as he may desire and the court or judge may deem necessary and proper. The testimony at such hearing shall be taken down and preserved by the District Court Reporter, the same to be transcribed and filed as part of the record when so ordered by the court or judge, and testimony may also be taken by deposition under such rules as the Board may prescribe. The judge of the district court wherein the proceedings are brought shall call in to sit with him upon the hearing of any such proceedings two other district judges; provided however that the accused attorney shall be tried before said three-judge court, and without a jury."

Sec 89-825 "When the summons has been served, or publication made, the action is pending; and while pending, no interest can be acquired by third persons in the subject matter thereof as against plaintiff's title."

Sec. 9-118—Filing of findings of court or jury—"When the hearing is before the court without a jury, findings shall be made upon the evidence produced, together with the court's recommendations, the same to be filed with the clerk of the Supreme Court, together with a transcript of the evidence, the original deposition, if any, and other papers in the cause or proceedings. Where there has been jury trial of the facts, the verdict, together with said a jury trial of the facts, the verdict, together with said court's recommendations and other papers aforesaid shall be so filed in the Supreme Court. Upon approval by the district court or the judge thereof the county shall pay the fees of witnesses and reporter, and other disbursements incurred in the conduct of the hearing, whether the hearing be one of disbarment or for any other purpose authorized by this chapter.

Sec. 9-119 Hearing by Supreme Court: "There shall be a hearing before the Supreme Court upon the record certified by the district court, under such rules of procedure as said Supreme Court may prescribe. The Supreme Court shall render such judgment as the facts warrant, or may remand the case to the district court for further investigation and consideration, either by said court or by the Board. And the Supreme Court may by its judgment order the accused attorney to be disbarred, or suspended or subjected to such other discipline as may be deemed proper upon the facts, or its judgment may be one of acquital and discharging the accused.— • • • "

Rules of Supreme Court:

Rule 5. "Plea of Accused. The accused may demur to or answer the complaint. If he demurs, the district court shall determine the demurrer, and if it is overruled, he may answer within such time as may be fixed by the court. Amendments to the complaint or answer may be made in the discretion of the court."

Rule 7 "Trial—If the accused desires a trial of the facts by jury, he shall attach a written demand for the same to his answer; otherwise a trial by jury shall be deemed

waived. When a trial is had before a jury, the jury shall consist of twelve jurors, selected, empanelled and sworn as near as may be to the provisions of law relating to the trial of civil cases by jury except that each of the parties to the proceedings shall be entitled to four preemptory challenges. The trial court shall instruct the jury upon the law as in civil cases, and the verdict shall be guilty or not guilty on each charge set forth in the complaint. No jury fee shall be required."

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